

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EDWARD J. ROZCICHA .)

For Appellant: Edward J. Rozcicha, in pro. per.
For Respondent: James C. Stewart
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Edward J. Rozcicha against a proposed assessment of additional personal income tax in the amount of \$361.12 for the year 1976.

Appeal of Edward J. Rozcicha

The sole issue for determination is whether appellant qualified as head of household for the year 1976..

Appellant, whose divorce became final in 1975, filed his 1976 personal income tax return as a head of household. Appellant claimed a dependency credit for two of his daughters and named his third daughter as the dependent qualifying him for head of household status. Upon inquiry, respondent was informed by appellant that none of his three daughters lived with him during the entire appeal year. Respondent allowed an additional dependent credit, but disallowed head of household filing status because none of the daughters lived with him during the entire taxable year.

It is appellant's position that he should qualify as a head of household because he paid more than one-half of the support for each of his three daughters.

Revenue and Taxation Code section 17042 provides, in pertinent part:

For purposes of this part, an individual shall be considered a head of household if, and only if, such individual is not married at the close of his taxable year, and . . .

(a) Maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of--

(1) A ... daughter ... of the taxpayer. ...

In prior appeals we have held that section 17042, which requires that a household be provided for the "taxable year," means for the entire taxable year. (Appeal of Henry C. H. Hsiung, Cal. St. Bd. of Equal., Dec. 17, 1974; Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974; see also, Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (b)(1).) In the present appeal appellant's daughters did not occupy his household for the entire taxable year. Although respondent's regulations provide for a "temporary absence due to special circumstances," there is no evidence in the record to indicate that the absence of any of appellant's daughters from his home was temporary. Therefore, since none of appellant's daughters lived with him for the entire year, he cannot qualify as head of household.

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The fact that appellant contributed over **one-** half of the support for each of his three daughters is sufficient to **allow him** to claim them as dependents, for which respondent allowed the appropriate credit. However, this fact alone does not allow appellant to claim head of household status where none of the dependents occupied his household for the entire taxable year.

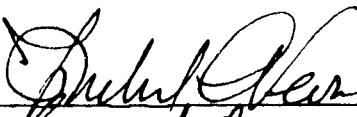

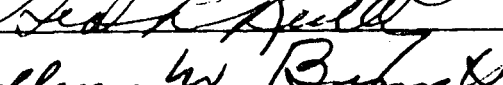
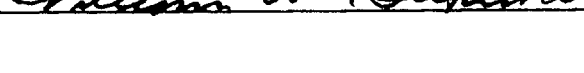
For these reasons we conclude that respondent's action in this matter must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Edward J. Rozcicha against a proposed assessment of additional **personal income** tax in the amount of \$361.12 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of March , 1980, by the State Board of Equalization.

, Chairman
, Member
, Member
, Member
_____, Member